Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-48

JOSEPH B. WALLES,

Petitioner,

v.

BECHTEL CORP., *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

GERALD T. SULLIVAN
Keyes & Crawford
Suite 615 Merchants National
Bank Building
Cedar Rapids, Iowa 52401

EDWIN VIEIRA, JR.
12408 Greenhill Drive
Silver Spring, Maryland 20904

8 July, 1977

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IN THE

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Repsondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

Petitioner Joseph B. Walles respectfully prays that this Court issue a writ of certiorari to review the final judgment and opinion of the Supreme Court of Iowa rendered in these proceedings on 20 April, 1977.

OPINIONS BELOW

The opinion of the Supreme Court of Iowa is reported at 252 N.W.2d 701, and appears in Appendix A, *infra* pp. 1a-14a. The opinion of the Linn County (Iowa) District Court is unreported, and appears in Appendix B, *infra* pp. 1b-5b.

JURISDICTION

The opinion of the Supreme Court of Iowa was filed on 20 April, 1977; and its order remanding the case was entered on 18 May, 1977. Appendix A, *infra* pp. 1a, 15a. This petition for certiorari is filed less than ninety (90) dyas from either of those dates. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1257(3) (1970).

QUESTION PRESENTED

If Petitioner's complaint alleged only that Respondents had conspired to condition his hire and continued employment on union membership (that is, to maintain a so-called "closed shop"), does federal law preempt the provision of Iowa law which bans such a requirement and which otherwise would support Petitioner's claims for relief; or does federal law recognize the plenary power of that State to outlaw all agreements between employers and unions conditioning employment, in any way, on membership in or financial support of labor organizations?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article VI, clause 2, of the United States Constitution; sections 8(a)(3) and 14(b) of the National Labor Relations Act (NLRA), 29 U.S.C. §§158(a)(3), 164(b) (1970); and section 736A of the 1971 Code of Iowa.

The full text of these constitutional and statutory provisions appears in Appendix C, *infra* pp. 1c-4c.

STATEMENT OF THE CASE

Petitioner Joseph B. Walles is an electrician who, at all times material hereto, was a member of the International Brotherhood of Electrical Workers (IBEW) through membership in Local 716, a Texas affiliate of the IBEW. In September, 1971, Walles presented to an agent of Local 405, an Iowa affiliate of the IBEW, a letter of introduction and recommendation for employment from Local 716. He then obtained employment from Bechtel Corporation on a construction site in Linn County, Iowa. On 3 April, 1972, Bechtel discharged Walles.

On 29 March, 1974, Walles filed a complaint in the Linn County District Court against Bechtel, the IBEW, Local 405, and Local 716. He recited the above-stated facts and alleged that, during his employment by Bechtel, he had regularly paid union dues to Local 405, but had become in arrears in dues-payments to Local 716; that he had attempted to pay the arrears to Local 716, but had been denied opportunity to do so by the latter's agents; that Local 716 had advised agents of Local 405 of his (Walles') non-payment of dues; and that Bechtel had discharged him after being notified of the situation by Local 405. Complaint ¶¶1-4, Appendix D, *infra* pp. 2d-3d. Walles then asserted that the defendants had conspired to make union membership or dues-payments a condition of employment in Iowa, and that this conspiracy was in violation of the "right-to-work" law. *Id.* ¶5, Appendix D, *infra* pp. 3d-4d. His complaint prayed for compensatory and punitive damages.

The defendants filed special appearances, arguing *inter alia* that federal law preempted the Iowa courts from exercising subject-matter jurisdiction over Walles' "right-to-work" claims. Appendix E, *infra* pp. 1e-14e. The trial court overruled all the special appearances on the preemption issue, citing this Court's opinion in *Local 1625, Retail Clerks* v. *Schermerhorn*, 375 U.S. 96 (1963); but it sustained the unions' special appearances on an unrelated issue of state law, and dismissed those defendants from the case. Appendix B, *infra* pp. 1b-5b. Bechtel obtained leave to present an interlocutory appeal on the pre-

emption question; Walles appealed the trial court's dismissal of the unions; and the unions cross-appealed on the issue of federal preemption.

The Supreme Court of Iowa reversed on the preemption question. It read Walles' complaint as alleging a conspiracy among the Respondents to maintain a closed shop on Bechtel's construction site; noted that federal law proscribes that form of compulsory unionism in section 8(a)(3) of the NLRA; and held that therefore the Iowa courts were divested of subject-matter jurisdiction over the closed shop, notwithstanding the Iowa "right-to-work" law and section 14(b) of the NLRA. Appendix A, *infra* pp. 1a-14a.

Walles now seeks review of the decision of the Supreme Court of Iowa that, consistently with federal law, the Iowa "right-to-work" law cannot apply to the closed shop.

REASONS FOR GRANTING THE WRIT

I.

The decision of the Supreme Court of Iowa is contrary to the plain language and legislative history of section 14(b) of the National Labor Relations Act.

A. The statutory language.

Section 14(b) of the NLRA provides that

> [n]othing in [the NLRA] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State * * * in which such execution or application is prohibited by State * * * law.

29 U.S.C. §164(b) (1970). The section explicitly takes as a premise the existence of States in which "the execution or application of agreements requiring memberhsip in a labor organization as a condition of employment * * * is prohibited by

State * * * law" — but without in any manner limiting the reach of the terms "membership" or "condition of employment". On its face, then, this section includes the closed shop within those "agreements requiring membership" which a State may ban as a "condition of employment".* And its meaning must therefore be that "[n]othing" in the NLRA "shall be construed as authorizing" the closed shop in a State which has prohibited the closed shop by its law.

That "[n]othing" must include *inter alia* section 8(a)(3) of the NLRA, 29 U.S.C. §158(a)(3) (1970). The latter section, of course, outlaws the closed shop as a matter of federal law. But, in the context of section 14(b), it cannot logically preempt State laws on the subject as well. If, relying on section 8(a)(3), a court invoked the preemption doctrine to preclude application of a State's otherwise valid "right-to-work" law to the closed shop, its decision would "construe the NLRA] as authorizing" the closed shop in that State. For the decision would necessarily override and nullify the proscription of the "right-to-work" law, thereby permitting the closed shop to exist or (in short) "authorizing" that form of compulsory unionism as a matter of State law.

It follows, therefore, that given section 14(b) and notwithstanding section 8(a)(3), the preemption doctrine cannot apply to the closed shop any more than it does to other forms of compulsory unionism.

B. The legislative history.

The legislative history of sections 8(a)(3) and 14(b) unequivocally supports this conclusion. Speaking of the section in House

*A *closed*-shop arrangement requires union membership as a condition of hire and of continued employment. A *union*-shop arrangement requires union membership as a condition of continued employment, although not of hire. And an *agency*-shop arrangement requires the payment of (typically) union dues and fees, but not union membership, as a condition of continued employment. *See* 3 CCH Lab. L. Rep. ¶4520. No one questions that State "right-to-work" laws proscribing the union and agency shops are *not* preempted by the NLRA. *See* Local 1625, Retail Clerks v. Schermerhorn, 375 U.S. 96 (1963).

Bill H.R. 3020 which thereafter became section 14(b), the House Committee on Education and Labor reported that the

> rule [of preemption] has necessitated a special provision * * * to give to the States a concurrent jurisdiction in respect of closed-shop and other union-security arrangements.

H.R. Rep. No. 245, 80th Cong., 1st Sess. 40 (1947). In a later conference report on the same question, the House Committee reported that

> [u]nder the House bill there was included a new section * * * of the National Labor Relations Act to assure that nothing in the act was to be construed as authorizing any closed shop, union shop, * * * or other form of compulsory unionism agreement in any State where the execution of such agreement would be contrary to State law. Many States have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in those States illegal. It was never the intention of the National Labor Relations Act, as is disclosed by the legislative history of that act, to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism. Neither the so-called "closed shop" proviso in section 8(a) of the existing act nor the union shop * * * proviso in section 8(a)(3) of the conference agreement can be said to authorize arrangements of this sort in States where such arrangements were contrary to the State policy. To make certain that there should be no question about this, section 13 was included in the House Bill. The conference agreement, in section 14(b), contains a provision having the same effect.

H.R. Rep. No. 510, 80th Cong., 1st Sess. 60 (1947).

The same understanding pervades congressional debate on section 14(b). For example, on 16 April, 1947, arose the following colloquy:

> Mr. HOFFMAN. *** I wish the Members of the House would take this bill *** and read section 13 [the predecessor of section 14(b)]. *** I will ask the gentleman from North Carolina [Mr. BARDEN] to tell me what it means. I know the purpose or at least I think I do. I know the statement was made in committee that the States were

> to be given the right to legislate on the subject. The purpose is to permit States to legislate if they want to on the closed or security union shop or open shop issue. But this section does not do that. What does that section mean?
>
> * * * * *
>
> Mr. BARDEN. * * * It is dealing with a very technical question of regulating commerce between the several States, and in view of the fact that many of the States have passed laws dealing with the closed shop, why, then, the committee felt * * * that the States should be recognized and their laws should certainly be given full power and effect as far as a State is concerned.
>
> * * * * *
>
> Mr. JENNINGS. Does it not in effect mean this, and is it not designed to have this effect, that * * * it concedes the right of the several States to pass legislation or laws such as have been passed by certain States?
>
> Mr. BARDEN. The gentleman is exactly correct.

93 Cong. Rec. 3620-21 (1947). On 5 June of that year, Senator Taft reported on the conference agreement, saying that section 14(b)

> make[s] it perfectly clear that nothing in the act is to be construed as authorizing compulsory union membership agreements, in States where the execution or enforcement of such agreements would be contrary to State law. Many States have enacted laws or adopted constitutional provisions to make all forms of compulsory unionism in such States illegal. * * * [I]t was not the intent to deprive the States of such power.

Id. at 6602. And on the next day, he said that

> in the report of the Committee on Labor and Public Welfare to the Senate, we stated that in our opinion there was nothing in the bill as originally reported by the committee which in any way would invalidate the provisions of a State law prohibiting the closed shop. * * * [I]n putting in this express provision from the House bill [section 14(b)], we in no way change the bill as passed by the Senate of the United States.

Id. at 6679.

In sum, the legislative history refutes any notion that section 14(b) does not except from the preemption doctrine *all* forms of compulsory unionism, including (if not especially) the closed shop.

The statutory language and the legislative history thus compel reversal of the Supreme Court of Iowa.

II.

The decision of the Supreme Court of Iowa is contrary to controlling decisions of this Court.

As early as 1949, this Court recognized in *Algoma Plywood* that section 14(b) preserves a concurrent power in the States to regulate all forms of compulsory unionism. After explaining how, under the Wagner Act, the States had retained authority to ban closed-shop arrangements, the Court pointed out that, because the Taft-Hartley amendment to section 8 "forbids the closed shop and strictly regulates the conditions under which a union-shop agreement may be enforced, §14(b) was included to forestall the inference that federal policy was to be exclusive". *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Rel'ns Board*, 336 U.S. 301, 314 (1949).

Later, in the second *Schermerhorn* decision, the Court put to rest any notion that federal law preempted state regulation of compulsory-unionism agreements. "Congress", said the Court,

> chose to abandon any search for uniformity in dealing with the problems of state laws barring the execution and application of agreements authorized by §14(b) and decided to suffer a medley of attitudes and philosophies on the subject.
>
> As a result of §14(b), there will arise a wide variety of situations presenting problems of the accomodation of state and federal jurisdiction in the [compulsory-unionism] field.

Local 1625, Retail Clerks v. *Schermerhorn*, 375 U.S. 96, 104-05 (1963). Moreover, the Court explicitly distinguished the *Garmon* line of preemption cases, pointing out that the latter "did not present for decision any problem under §14(b)". 375 U.S. at 105; *see id.* at 103-04, *distinguishing San Diego B.T. Council* v. *Garmon*, 359 U.S. 236 (1959).

The Supreme Court of Iowa did not follow *Algoma Plywood* and *Schermerhorn* in reaching its decision that Petitioner's complaint should be dismissed under the preemption doctrine. Rather, it applied *Garmon* and that case's progeny. For that reason alone, its decision must be reversed.

III.

The decision of the Supreme Court of Iowa is contrary to national labor policy.

In the area of compulsory unionism, national labor policy recognizes a privilege for the States, if they so choose, to intervene with remedies different from and perhaps more stringent than those available through the National Labor Relations Board in situations where employees suffer discrimination because of their refusal to join or financially support a labor organization. Congress was well aware when it enacted section 14(b) of the NLRA's short statute of limitations, of the limited authority of the Board to offer relief by way of damages — and of the desire and practice of several States to deal with compulsory unionism in a fashion more stringent than that of the Board through its unfair-labor-practice jurisdiction. Its decision, in the words of *Schermerhorn*, "to suffer a medley of attitudes and philosophies on the subject" thus embodies a policy-judgment that unions and employers who impose compulsory unionism on dissenting employees be potentially subject to State-imposed liability of longer duration, and penalties of ha[illegible] consequence, than they face under federal law — includin[illegible] some States, *criminal* charges. *E.g.*, Iowa Code §736A.6 ([illegible].1); Va. Code Ann. art. 3, §40.1-69 (1976); Wyo. Stat. Ann. tit. 27, §[illegible]5.8 (1967).

The decision of the Supreme Court of Iowa frustrates this policy — if only because Petitioner's claim for relief against Respondents would have been untimely when filed had it been brought in the Board rather than the Iowa courts.

Moreover, if the decision of the Supreme Court of Iowa is permitted to stand, it will encourage lawlessness on the part of unions and employers bent upon imposing compulsory unionism in "right-to-work" States. Malfactors could easily conclude that their interests would be served by attempting to institute the *most* onerous and *most* clearly illegal form of compulsory unionism (the closed shop) in those States, since such action would frustrate application of harsh State laws by relegating victimized employees exclusively to the Board. Obviously no rational doctrine of preemption could require this result.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the Supreme Court of Iowa.

Respectfully submitted,

GERALD T. SULLIVAN
Keyes & Crawford
Suite 615 Merchants National
Bank Building
Cedar Rapids, Iowa 52401

EDWIN VIEIRA, JR.
12408 Greenhill Drive
Silver Spring, Maryland 20904

8 July, 1977

APPENDIX A

Opinion of the Supreme Court of Iowa 20 April, 1977

IN THE SUPREME COURT OF IOWA

JOSEPH B. WALLES, Appellant, v. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AF of L-CIO, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AF of L-CIO, LOCAL 405, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AF of L-CIO, LOCAL 716, Appellees, v. BECHTEL CORPORATION Appellant, v. JOSEPH B. WALLES, Appellee.	) Filed April 20, 1977))))))))))))))))))))	21 — 57586

Appeal from the Linn District Court—Robert Osmundson, Judge.

Plaintiff-employee in a law action seeking recovery for his wrongful discharge from employment appeals from the trial

court's ruling sustaining the special appearances of defendant labor organizations. Bechtel, the employer, appeals from the court's order overruling its special appearance.—Reversed on Bechtel's appeal and affirmed on plaintiff's appeal.

James W. Crawford and Gerald T. Sullivan, of Cedar Rapids, and Edward Vieira, Jr., of Washington, D.C., for appellant Joseph B. Walles and Appellee, Joseph B. Walles.

Patrick M. Roby and Robert R. Rush, of Shuttleworth & Ingersol of Cedar Rapids, for appellant Bechtel Corporation.

Robert E. Conley, of Des Moines, for appellee, International Brotherhood of Electrical Workers, AF of L-CIO.

Joseph E. Day, of Cedar Rapids, for appellee, International Brotherhood of Electrical Workers, AF of L-CIO, Local 405.

Raymond W. Conley, of Des Moines, for appellee, International Brotherhood of Electrical Workers, AF of L-CIO, Local 716.

Heard before MOORE, C.J., MASON, REYNOLDSON, HARRIS, and McCORMICK, JJ. MASON, J.

The question presented in this matter is whether plaintiff Joseph B. Walles can maintain his lawsuit in the Iowa district court. It comes to us by way of appeal from the trial court's rulings on various special appearances.

Defendant, International Brotherhood of Electrical Workers, AF of L-CIO (hereinafter referred to as International), is an association of local labor organizations and individuals residing in various places including Linn County, Iowa. Defendant, International Brotherhood of Electrical Workers, AF of L-CIO, Local 405 (Local 405), is a labor organization comprised of individuals residing in various places including Linn County, Iowa with its principal office located in Cedar Rapids, Linn County. Defendant, International Brotherhood of Electrical Workers, AF of L-CIO, Local 716 (Local 716), is a labor organization comprised of individuals residing in various places in the United States with its principal office in Houston, Texas. Defendant, Bechtel Corporation (Bechtel), is a foreign corporation authorized to do business in the state of Iowa and actually engaged in construction business in Linn County. Local 405 and

Local 716 are local labor organizations which are part of, and are controlled by, International in their relations with members. Plaintiff at all times material hereto was a member of International through his affiliation with Local 716.

In September of 1971 plaintiff, an electrician, presented to an agent of Local 405 a letter of introduction and employment recommendation from Local 716. As a result, plaintiff obtained employment by Bechtel on a construction site near Palo, Iowa. April 3, 1972, plaintiff was discharged. He maintains his discharge was pursuant to an alleged agreement or understanding between Bechtel and Local 405 that union membership was necessary for employment as an electrician on the construction site.

During employment by Bechtel plaintiff regularly paid assessments to Local 405 but became in arrears in dues payment to Local 716. Before being discharged by Bechtel plaintiff attempted to pay the arrears in dues to Local 716 but payment was refused by its authorized agents. Local 716 advised the authorized agent or agents of Local 405 of plaintiff's status who in turn notified Bechtel.

March 29, 1974, Walles commenced an action at law against Bechtel, International, Local 405 and Local 716. No other parties or individuals were named in the suit.

After identifying the parties to the lawsuit and describing the circumstances leading to his employment and subsequent discharge by Bechtel, plaintiff alleged as a claim for relief that an agreement or understanding existed between Bechtel and Local 405 that union membership was necessary for employment as an electrician on the construction site in Palo; that the concerted activities of defendants resulted in his wrongful discharge from employment with Bechtel for the status of plaintiff's union membership; and that said actions constituted violations of section 736A (1) (2) (3) and (4), The Code. In division 1 plaintiff prays for compensatory damages in the amount of $100,000 and in division 2 seeks damages in the amount of $150,000. He did not seek injunctive relief.

Proper service of original notice was made on Bechtel. Service on Local 405 was made by delivery of the original notice to the vice-president of Local 405. Original notices to the International and Local 716 were filed with the secretary of state and notifications of filing were forwarded by certified mail to the defendants and to the officers of the International and Local 716. The record is clear and no one disputes that these notifications were received.

Special appearances were filed by all defendants. Bechtel's special appearance stated that (1) Mr. Walles' allegations, if true, violated sections 7 and 8 of the National Labor Relations Act; (2) Mr. Walles failed to allege that the National Labor Relations Board or any other federal agency had refused jurisdiction of his claim; and (3) that because the subject matter of the suit could constitute a violation of the National Labor Relations Act, the state court lacked jurisdiction over this defendant. The trial court overruled the special appearance finding that the preemption doctrine did not apply in this case. Bechtel sought and obtained leave to present its iterlocutory appeal from the trial court's overruling of its special appearace.

The written ground in the special appearance of Local 405 was that federal law preempted the state courts from jurisdiction over the subject matter of the suit. The written grounds in the special appearance of Local 716 were: (1) service of an unincorporated association cannot be made under section 617.3, The Code, 1971, (2) defendant's lack of minimum contacts, and (3) federal preemption. The written grounds in the special appearance of the International were: (1) the International by allegation of the petition did not qualify as a nonresident and thus could not be served under section 617.3, The Code, 1971, (2) the International cannot be sued in its own name, and (3) federal preemption.

Plaintiff resisted the special appearances. The trial court ruled against defendants on the preemption issue relying upon Retail Clerks Int. Ass'n L. 1625 v. Schermerhorn, 375 U.S. 96, 84 S. Ct. 219, 11 L.Ed.2d 179. However, the special appearance of each labor organization was sustained on the basis of plaintiff's

failure to name individual defendants in addition to defendant labor organizations relying upon Boyer v. Iowa High School Athletic Assn., 258 Iowa 285, 287-288, 138 N.W.2d 914, 915. All other grounds asserted by the various defendants were rejected by the court. Plaintiff appeals from these decisions.

The International, Local 405 and Local 716 have cross appealed.

The following issues are presented for this court's review by the parties designated:

(1) Do preemption concepts prohibit a state court from exercising jurisdiction over plaintiff's claim for relief? (All parties).

(2) Can grounds asserted in the special appearance of one defendant inure to the benefit of other similarly situated defedants? (Plaintiff, Local 405 and Local 716).

(3) Is there a failure to obtain jurisdiction over an unincorporated labor union by reason of the fact that individual members or officers were not named as additional party defendants? (All parties except Bechtel).

(4) Is International beyond the reach of section 617.3, The Code, in light of the fact some of its members are residents of Iowa? (Plaintiff and International).

(5) Is section 617.3, The Code, available to secure jurisdiction over a foreign unincorporated association? (Plaintiff, Local 716 and International).

I. In ruling on a special appearance this court accepts as true the allegations of the petition. Plaintiff has the burden of sustaining jurisdiction, but once a prima facie case has been demonstrated the burden of going forward with the evidence to rebut or overcome the prima facie showing is upon defendant. This court's review is not de novo, and consequently, the trial court's findings of fact are binding upon us if supported by substantial evidence. In addition, the evidence is viewed in the light most favorable to those findings. Douglas Mach. & Eng. v. Hyflow Blanking Press, 229 N.W.2d 784, 787-788 (Iowa 1975); Creative Comm. Consult. v. Byers Transp., 229 N.W.2d 266, 268-269 (Iowa 1975).

The theme common to the special appearances of all defendants in this matter is the contention the Linn District Court lacked jurisdiction to consider the subject matter of plaintiff's petition since the allegations of the petition, if proven, would charge an unfair labor practice prohibited by section 8 of the National Labor Relations Act, 29 U.S.C.A. section 158, and committed to the exclusive jurisdiction of the National Labor Relations Board (NLRB) by section 10(a), 29 U.S.C.A. section 160(a).

Specifically, defendants argue plaintiff alleges the maintenance of a "closed shop" pursuant to the alleged agreement which is clearly violative of sections 8(a)(1) and 8(a)(3) of the NLRA, 29 U.S.C.A. section 158(a)(1) and (3).

Under the principle of law stated earlier in this division plaintiff has the burden of alleging sufficient facts to demonstrate a prima facie case of subject matter jurisdiction.

Ordinarily, plaintiff is aided by a presumption that a court of general jurisdiction has jurisdiction over a particular controversy unless a showing is made to the contrary.

In this state the district court is a court of general jurisdiction. Section 602.1, The Code, provides:

"There shall be a unified trial court in the state of Iowa, known as 'Iowa District Court'. The Iowa district court shall have exclusive, general and original jurisdiction of all actions, proceedings, and remedies, civil, criminal, probate, and juvenile, *except in cases where exclusive or concurrent jurisdiction is conferred upon some other court, tribunal, or administrative body, and it shall have and exercise all the power usually possessed and exercised by trial courts of general jurisdiction* and shall be a court of record." (Emphasis supplied).

In light of the emphasized portion of this statute plaintiff would not be aided by the presumption just mentioned in demonstrating existence of a prima facie case as to the subject matter jurisdiction if, as defendants argue, the NLRB has exclusive jurisdiction of the subject matter of plaintiff's petition.

Plaintiff responds to defendants' contention by maintaining his petition charges existence of a "union shop" agreement. This

type of agreement, allowed by the first proviso of section 8(a)(3) of the NLRA, 29 U.S.C.A. section 158(a)(3), is subject to a state's right to ban such an agreement. Section 14(b), 29 U.S.C.A. section 164(b), provides:

"Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

This statute enables a state to enact a "right-to-work" law, such as chapter 736A, The Code, prohibiting union or agency shops which are permitted by the NLRA. Oil, Chemical & Atomic Workers, Etc. v. Mobil Oil, U.S. , 96 S. Ct. 2140, 2142, , L.Ed.2d ; Ficek v. International Bro. of Boilermakers, Etc., 219 N.W.2d 860, 865 (N.D. 1974); Moore v. Local No. 10, Plumbers & Steamfitters U., 211 Va. 520, 179 S.E.2d 15, 18. In addition, under the Supreme Court's holding in *Schermerhorn*, supra, where a state has exercised its section 14(b) power and enacted a right-to-work law, its courts, rather than the NLRB alone, have jurisdiction to enforce that law. 375 U.S. at 102-103, 84 S. Ct. at 222, 11 L.Ed.2d at . See also *Ficek*, supra, 219 N.W.2d at 865.

Iowa's policy regarding the regulation of compulsory-unionism arrangements is embodied in the following sections of the Code:

"736A.3 Contracts to exclude unlawful. It shall be unlawful for any person, firm, association, corporation or labor organization to enter into any understanding, contract, or agreement, whether written or oral, to exclude from employment members of a labor union, organization or association, or persons who do not belong to, or who refuse to join, a labor union, organization or association, or because of resignation or withdrawal therefrom."

"736A.4 Union dues as a prerequisite to employment—prohibited. It shall be unlawful for any person, firm, or association, labor organization or corporation or political subdivision, either directly or indirectly, or in any manner or by any means as a prerequisite to or a condition of employment to require any person to pay dues, charges, fees, contributions, fines

or assessments to any labor union, labor association or labor organization."

If plaintiff's allegation is that defendants maintained a "closed shop" agreement, the NLRB has exclusive jurisdiction to deal with plaintiff's claim. On the other hand, if plaintiff's claim is based upon the alleged existence of a "union shop" or some other less onerous union security agreement, a state court has jurisdiction to hear plaintiff's claim for relief based upon alleged violations of a right-to-work law.

Plaintiff's allegations as to the type of agreement entered into by defendants are as follows:

"* * *

"4. * * *; that an agreement or understanding existed between said Bechtel Corporation and Local 405 that union membership was necessary for employment as an electrician on the construction site * * *.

"5. That the actions on the part of Local 405, Local 716, and therefore the International, separately and in combination with each other and in combination with the actions of Defendant Bechtel Corporation, caused the dismissal of the Plaintiff purely for the status of his union membership; * * * an agreement or understanding, * * * to exclude from employment electricians who have not curret union status in the International; *** they have required the Plaintiff as a condition of employment, to pay dues, charges, fees, contributions, and fines or assessments to a labor organization; that, pursuant to said condition, Defendants have jointly and severally * * * denied to the Plaintiff continued employment with Defendant Bechtel Corporation; * * *."

This statement from Higgins v. Cardinal Manufacturing Company, 188 Kan. 11, 360 P.2d 456, 461, is relevant:

"* * * In the evolution of Federal American Law three types of union-security provisions in collective bargaining agreements have commanded attention: (a) The *closed shop* provision requires membership in the contracting union before a job applicant can be employed and for the duration of his employment; (b) the *union shop* provision does not require an applicant to be a member of the union before he is hired, but it

does require him to join, and usually to continue his membership in the union after he is hired; and (c) the *agency shop* * * * [not of concern herein]." (Emphasis in original).

Oil, Chemical & Atomic Workers, Etc. v. Mobil Oil, U.S. at , 96 S. Ct. at 2142, L.Ed.2d at , n.1, has this statement:

"A 'union shop' agreement provides that no one will be employed who does not join the union within a short time after being hired. An 'agency shop' agreement generally provides that while employees do not have to join the union, they are required—usually after 30 days—to pay the union a sum equal to the union initiation fee and are obligated as well to make periodic payments to the union equal to the union dues. See NLRB v. General Motors, 373 U.S. 734, 83 S. Ct. 1453, 10 L.Ed.2d 670 (1963). The 'union shop' and 'agency shop' varieties of 'union security' agreements are to be distinguished from the 'closed shop' agreement, barred by §8(a)(3), which provides that the employer will hire no one who is not a member of the union at the time of hiring."

In addition to the definitional statements from *Oil, Chemical & Atomic Workers*, supra, the following statements are instructive:

"* * * A closed shop is one where only union members may be hired. A union shop is one where the employer is allowed to hire non-union men but they must join the union within a limited number of days, usually 30 days. * * *." Minor v. Building and Construction Trades Council, 75 N.W.2d 139, 147 (N.D. 1956).

"A closed-shop contract is one which requires union membership as a condition of hiring and of continued employment. * * * Not only are discharges under a closed-shop contract unlawful under the amended Act * * * , but the mere execution of such a contract is, in itself, a violation of the Act * * *. No evidence of discrimination under the contract is necessary to establish the violation. Informal closed-shop arrangements * * * , as well as either oral or written agreements * * *, are unlawful. Union rules concerning preferential or

exclusive hiring of union members may be evidence of closed-shop conditions * * * ." CCH Labor Law Reporter, Labor Relations, Vol. 3, paragraph 4520, page 9515.

"A union-shop contract is one which requires union membership as a condition of retaining employment * * *. Union membership is not required as a condition of hiring; however, employees must join the union within a specified time after they are hired or after execution of the contract. * * * ." *Id.*

"A closed-shop provision * * * requires that all employees be members of the union when hired and remain members in good standing during their period of employment. In its simplest form, a typical closed-shop clause reads as follows:

" 'The employer shall employ none but members in good standing in the union. All employees shall remain members in good standing as a condition of continued employment.' " CCH Labor Law Reporter, Labor Relations, Vol. 3, paragraph 4520.01, page 9519.

Where the facts alleged in a petition seeking relief for an unfair labor practice reasonably bring the controversy within the sections of the NLRA prohibiting such activity the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issue in the first instance. Langrehr v. United Bro. of Carpenters, Etc., 236 N.W.2d 339, 342 (Iowa 1975), citing authorities. The allegations in paragraph 4 of the petition reasonably charge that a "closed shop" agreement existed between Bechtel and Local 405.

II. Plaintiff in argument maintains even if it be determined that the allegations of his petition do charge a "closed shop" agreement between Bechtel and the union, section 14(b) permits the state to ban the "closed shop" as well as the "union shop."

Plaintiff insists the doctrine of federal preemption does not apply where a state court enforces a valid state right-to-work law such as chapter 736A, The Code.

This argument presents the question whether the preemption doctrine applies to the type of dispute involved in the case before us.

In discussing the doctrine of preemption in the labor field the Court in San Diego Building Trades Council, Etc. v. Garmon, 359 U.S. 236, 241-244, 79 S. Ct. 773, 778-779, 3 L.Ed.2d 775, made this statement:

"In determining the extent to which state regulation must yield to subordinating federal authority, we have been concerned with delimiting areas of potential conflict; potential conflict of rules of law, of remedy, and of administration. * * * Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and equipped with its specialized knowledge and cumulative experience:

" 'Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes towards labor controversies. * * * A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. * * *' Garner v. Teamsters, etc. Union, 346 U.S. 485, 490-491, 74 S. Ct. 161, 165, 98 L.Ed. 228.

" * * *

"When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by §7 of the National Labor Relations Act, or constitute an unfair labor practice under §8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law.

Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes."

In Amalgamated Ass'n of St., E. R. & M. C. Emp. v. Lockridge, 403 U.S. 274, 276, 91 S. Ct. 1909, 1913, 29 L.Ed.2d 473, the Court had occasion to discuss further the doctrine of preemption in the labor field when it said:

"San Diego Building Trades Council v. Garmon, 359 U.S. 236, 79 S. Ct. 773, 3 L.Ed.2d 775 (1959), established the general principle that the National Labor Relations Act preempts state and federal court jurisdiction to remedy conduct that is arguably protected or prohibited by the Act. That decision represents the watershed in this Court's continuing effort to mark the extent to which the maintenance of a general federal law of labor relations combined with a centralized administrative agency to implement its provisions necessarily supplants the operation of the more traditional legal processes in this field."

The following statement appears later in the opinion, 403 U.S. at 288,, 91 S. Ct. at 1918, 29 L.Ed.2d at :

"The rationale for pre-emption, then, rests in large measure upon our determination that when it set down a federal labor policy Congress plainly meant to do more than simply to alter the then-prevailing substantive law. It sought as well to restructure fundamentally the processes for effectuating that policy, deliberately placing the responsibility for applying and developing this comprehensive legal system in the hands of an expert administrative body rather than the federalized judicial system."

In conclusion the Court had this to say:

" * * * While we do not assert that the *Garmon* doctrine is without imperfection, we do think that it is founded on reasoned principle and that until it is altered by congressional action or by judicial insights that are born of further experience with it, a heavy burden rests upon those who would, at this late date, ask this Court to abandon *Garmon* and set out again in quest of a

system more nearly perfect." 403 U.S. at 302, 91 S. Ct. at 1925-1926, 29 L.Ed.2d at .

Both *Garmon* and *Lockridge* are cited with approval by this court in Langrehr v. United Bro. of Carpenters, Etc., 236 N.W.2d at 342. Among other cases which have considered the doctrine of preemption in the labor field are: International Ass'n of Machinists v. Gonzales, 356 U.S. 617, 78 S. Ct. 923, 2 L.Ed.2d 1018; Local 100 of United Ass'n of Jour. & App. v. Borden, 373 U.S. 690, 83 S. Ct. 1423, 10 L.Ed.2d 638; Local No. 207, Int. Ass'n of Bridge, Etc. v. Perko, 373 U.S. 701, 83 S. Ct. 1429, 10 L.Ed.2d 646; N.L.R.B. v. General Motors Corporation, 373 U.S. 734, 83 S. Ct. 1453, 10 L.Ed.2d 670; Retail Clerks Int. Ass'n, L. 1625 v. Schermerhorn, 373 U.S. 746, 83 S. Ct. 1461, 10 L.Ed.2d 678 (Schermerhorn I); Retail Clerks Int. Ass'n, L. 1625 v. Schermerhorn, 375 U.S. 98, 84 S. Ct. 219, 11 L.Ed.2d 179 (Schermerhorn II).

In Dugdale Constr. Co. v. Operative etc. Assn., 257 Iowa 997, 135 N.W.2d 656, this court dealt with the doctrine of preemption in the labor field and cited, among other authorities, the *Garmon* decision.

In *Langrehr*, 236 N.W.2d at 343, this court said, "It is well settled that building construction may constitute interstate commerce as defined in the act. * * * [citing authority]."

It is settled beyond argument that a "closed shop" variety of union-security agreement is "outlawed" and prohibited by section 8(a)(3) of the NLRA, 29 U.S.C.A. section 158(a)(3). Jurisdiction of controversies arising from activities in connection with such agreements is in the exclusive jurisdiction of the NLRB, section 10(a) NLRA, 29 U.S.C.A. section 160(a).

Where the questionable labor conduct regulated by state law such as chapter 736A, The Code, is also an unfair labor practice under federal law the doctrine of preemption excludes state action. Langrehr v. United Bro. of Carpenters, Etc., 236 N.W.2d at 342; Farmer v. United Bro. of Carpenters, Etc., 45 U.S.L.W. 4263.

However, the police power of the state is not displaced by the NLRA when a state has an overriding interest in the labor

dispute because of criminal or tort actions, or because of violence. See *Langrehr*, 236 N.W.2d at 341.

We hold neither this court nor the district court has jurisdiction over the subject matter of plaintiff's claim by reason of the doctrine of preemption. Hence, he cannot maintain his lawsuit in the Iowa district court.

III. As pointed out, the question of subject matter jurisdiction was raised in the special appearances of each of the defendants in this lawsuit. Want of jurisdiction of the subject matter may be taken advantage of at any stage of the proceedings. It cannot be conferred by waiver, estoppel or consent.

"Every court has inherent power to determine whether it has jurisdiction over the subject matter of the proceedings before it. It makes no difference how the question comes to its attention. Once raised, the question must be disposed of, no matter in what manner of form or stage presented. The court on its own motion will examine grounds of its jurisdiction before proceeding further." Carmichael v. Iowa State Highway Commission, 156 N.W.2d 332, 340 (Iowa 1968). See also Lynch v. Uhlenhopp, 248 Iowa 68, 80, 78 N.W.2d 491, 498.

Error in the trial court's overruling of Bechtel's special appearance requires reversal on its appeal.

As noted, the court sustained the special appearances of defendant labor organizations on grounds other than lack of subject matter jurisdiction. Once the question was raised by the special appearances of these defendants the matter should have been disposed of on that basis. See Lloyd v. State, N.W.2d. (Iowa 1977). The court in those instances reached the right result for the wrong reason and is therefore affirmed on plaintiff's appeal from the adverse rulings of the court in regard to the labor organization defendants.

In view of our conclusions expressed herein we need not reach other issues presented by these appeals.

The case is therefore—Reversed on Bechtel's appeal and affirmed on plaintiff's appeal.

Order of the Supreme Court of Iowa
18 May, 1977

State of Iowa, ss:

The State of Iowa, *to the District Court of the County of* Linn *and State aforesaid:*

#LA583-037

Whereas, *There was certified to the* SUPREME COURT *of the State of Iowa, the record and proceedings in a certain cause which was in said District Court, the parties thereto being*

Joseph B. Walles *Plaintiff, and*

International Brotherhood of Electrical Workers, et al. *Defendant,*

wherein there was an appeal from the order and judgment rendered in the District Court to the SUPREME COURT, *and the said Court having duly examined the record and proceedings aforesaid, in the premises, at Des Moines, in said state, on* 20th *day of* April, *1977 did REVERSE on Bechtel's appeal and AFFIRM plaintiff's appeal the judgment aforesaid, as rendered in the Court below, and order further proceedings to be had in said Court, not inconsistent with the opinion of the* SUPREME COURT.

Therefore, *You are hereby commanded to proceed in the manner required by law and in harmony with the opinion in this* COURT, *anything in the record or proceedings aforesaid heretofore certified to the contrary notwithstanding.*

In Witness Whereof, *I have hereunto set my hand and affixed the Seal of said* COURT. *Done at Des Moines this* 18th *day of* May, A.D. 1977.

/s/ R. H. Richardson

.....

Clerk of Supreme Court.

By .....

Deputy.

APPENDIX B

Opinion of the Linn County (Iowa) District Court
31 July, 1974

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

JOSEPH B. WALLES,	)	
	)	
Plaintiff,	)	LA 583-0374
	)	
vs.	)	
	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL-CIO, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL-CIO, LOCAL 405, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL-CIO, LOCAL 716, and BECHTEL CORPORATION,	)	RULING ON SPECIAL APPEARANCES
	)	
Defendants.	)	

The special appearances of all Defendants were submitted on oral argument pursuant to assignment. The Plaintiff was represented by Gerald T. Sullivan and Edwin Vieira, Jr., the Defendant Bechtel Corporation by Patrick Roby and Robert Rush, the Defendant Local 405 by Joseph E. Day, the Defendant Local 716 by Raymond W. Conley, and the Defendant International by Robert E. Conley.

RULING ON SPECIAL APPEARANCE OF BECHTEL CORPORATION

The Defendant, Bechtel Corporation, appeared specially challenging the jurisdiction of this Court to hear the subject

matter of Plaintiff's petition on the ground that the subject matter was solely and exclusively under the jurisdiction of the National Labor Relations Board or the Federal Courts by reason of the National Relatios Labor Act, 29 U.S.C. chapter 7.

"Yet even if the union security agreement clears all federal hurdles, the states by reason of Section 14(b) (now 29 U.S.C. 164(b)) have the final say and may outlaw it."

"Garmon, however, does not state a constitutional principle; it merely rationalizes the problems of co-existence between federal and state regulatory schemes in the field of labor relations; and it did not present the problems posed by Section 14(b), viz., whether Congress had precluded state enforcement of select state laws adopted pursuant to its authority."

"* * * state power, recognized by Section 14(b) begins only with actual negotiation and execution of the type of agreements described by Section 14(b) (requiring membership in a labor organization as a condition of employment). Absent such a agreement conduct arguably an unfair labor practice would be a matter for National Labor Relations Board under Garmon."

Retail Clerks vs. Schermerhorn, 375 U.S. 98; 84 S. Ct., 219 at 222

" * * * we have found no authority which holds the federal government has taken from state courts jurisdiction to pass upon breach of contract claims * * *."

Dugdale Construction Co. vs. Operative Plasterers, et al, 135 N.W.2d 656 at 660

The Court holds that the ruling in the Schermerhorn case cited above is controlling; and, therefore, the special appearance of the Defendant, Bechtel Corporation, is overruled.

RULING ON SPECIAL APPEARANCE OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL-CIO, LOCAL 405 (Iowa Local)

This Defendant appeared specially asserting the same ground as did the Defendant, Bechtel Corporation, that federal law had pre-empted the subject matter.

The special appearance of the Defendant is overruled on the ground of the federal pre-emption as set forth in the discussion under the ruling on the Bechtel special appearance, but the special appearance is sustained on the ground that the Defendant is an unincorporated association and the Plaintiff has not properly obtained jurisdiction of an unincorporated association. See the discussion following under special appearance of the International Brotherhood.

RULING ON SPECIAL APPEARANCE OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL-CIO, LOCAL 716 (Texas Local)

This Defendant appeared specially challenging the jurisdiction of the Court over the Defendant on three grounds:

1) That it was served under Section 617.3 of the Code, and there is no provision in said section for service of notice upon an unincorporated association.

2) That it is an unincorporated association and does no business in Iowa, has no business contacts, nor has it any contract affecting any person or business within the state of Iowa.

3) The federal pre-emption ground asserted by the preceding two defendants.

The special appearance of this Defendant is overruled as to each and every ground, but it is sustained because the Defendant is an unincorporated association and the Plaintiff has not properly obtained jurisdiction of an unincorporated association. See the discussion following under special appearance of the International Brotherhood.

RULING ON SPECIAL APPEARANCE OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL-CIO, (International)

This Defendant appeared specially challenging the jurisdiction of this Court on three grounds:

1) That the Court was without jurisdiction over the Defendant because this Defendant was served under Section 617.3 of the Code, and the allegations of the Petition state that it is an association of local labor organizations and individuals residing in various places including Linn County, Iowa.

2) That the Defendant is an unincorporated association and as such cannot sue or be sued in its own name and action must be commenced in the manner of the commencement of action in a class action.

3) On the federal pre-emption ground urged by all other Defendants.

Rules 42, 56(f) and (g) do not per se make an unincorporated association subject to suit by common name, but they do mean an association may be sued by its common name with the joinder as parties defendant of one or more of those identified with the organization who are representative of the class.

Boyer vs. Iowa High School Athletic Association, 138 N.W.2d, 914 at 915. See also Nissen vs. International Brotherhood of Teamsters, et al., 295 N.W. 860.

Specific provision is made in this state for service of process upon associations.

Coughlon vs. Iowa High School Athletic Association, 150 N.W.2d, 660 at 663.

Section 617.3 (long arm statute) is not available to obtain jurisdiction of a resident of the state of Iowa.

The special appearance of this Defendant is sustained as to the first of the above-stated grounds and overruled as to ground two and three.

Dated this 31st day of July, 1974.

/s/ *Robert Osmundson*
JUDGE, SIXTH JUDICIAL
DISTRICT OF IOWA

Gerald T. Sullivan
Edwin Vieira, Jr.
Patrick Roby
Robert Rush
Joseph E. Day
Raymond W. Conley
Robert E. Conley

APPENDIX C

Constitutional and Statutory Provisions Involved

United States Constitution, Article VI, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

National Labor Relations Act, §8(a)(3), 29 U.S.C. §158(a)(3) (1970)

8(a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board

shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

National Labor Relations Act, §14(b), 29 U.S.C. §164(b) (1970)

(b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Iowa Code §736A (1971 & Supp. 1976)

736A.1 Right to join union

It is declared to be the policy of the state of Iowa that no person within its boundaries shall be deprived of the right to work at his chosen occupation for any employer because of membership in, affiliation with, withdrawal or expulsion from, or refusal to join, any labor union, organization, or association, and any contract which contravenes this policy is illegal and void.

736A.2 Refusal to employ prohibited

It shall be unlawful for any person, firm, association or corporation to refuse or deny employment to any person because of membership in, or affiliation with, or resignation or withdrawal from, a labor union, organization or association, or because of refusal to join or affiliate with a labor union, organization or association.

736A.3 Contracts to exclude unlawful

It shall be unlawful for any person, firm, association, corporation or labor organization to enter into any understanding, contract, or agreement, whether written or oral, to exclude from employment members of a labor union, organization or association, or persons who do not belong to, or who refuse to join, a labor union, organization or association, or because of resignation or withdrawal therefrom.

736A.4 Union dues as prerequisite to employment – prohibited

It shall be unlawful for any person, firm, association, labor organization or corporation, or political subdivision, either directly or indirectly, or in any manner or by any means as a prerequisite to or a condition of employment to require any person to pay dues, charges, fees, contributions, fines or assessments to any labor union, labor association or labor organization.

736A.5 Deducting dues from pay unlawful

It shall be unlawful for any person, firm, association, labor organization or corporation to deduct labor organization dues, charges, fees, contributions, fines or assessments from an employee's earnings, wages or compensation, unless the employer has first been presented with an individual written order therefor signed by the employee, which written order shall

be terminable at any time by the employee giving at least thirty days written notice of such termination to the employer.

736A.6 Penalty

Any person, firm, association, labor organization, or corporation or any director, officer, representative, agent or member thereof, who shall violate any of the provisions of this chapter or who shall aid and abet in such violation shall be deemed guilty of a misdemeanor.

736A.7 Injunction

Additional to the penal provisions of this chapter, any person, firm, corporation, association, or any labor union, labor association or labor organization, or any officer, representative, agent or member thereof may be restrained by injunction from doing or continuing to do any of the matters and things prohibited by this chapter, and all of the provisions of the law relating to the granting of restraining orders and injunctions, either temporary or permanent, shall be applicable.

736A.8 Exception

The provisions of this chapter shall not apply to employers or employees covered by the Federal Railroad Labor Act.

APPENDIX D

Petitioner's Complaint in the Linn County (Iowa) District Court

IN THE IOWA DISTRICT COURT

IN AND FOR LINN COUNTY

JOSEPH B. WALLES Plaintiff, –vs– INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL–CIO, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL–CIO, LOCAL 405, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFofL–CIO, LOCAL 716, and BECHTEL CORPORATION. Defendants.	)	NO. —— PETITION

DIVISION I

COMES NOW the Plaintiff, Joseph B. Walles, and for cause of action, jointly and severally, against Defendant International Brotherhood of Electrical Workers, AFofL-CIO, Defendant International Brotherhood of Electrical Workers, AFofL-CIO, Local 405, Defendant International Brotherhood of Electrical Workers, AFofL-CIO, Local 716 and Defendant Bechtel Corporation, states:

1. That the Defendant, International Brotherhood of Electrical Workers, AFofL-CIO, hereinafter referred to as "the International", is an association of local labor organizations and individuals residing in various places including Linn County, Iowa; that the Defendant International Brotherhood of Electrical Workers, AFofL-CIO, Local 405, hereinafter referred to as "Local 405", is a labor organization comprised of individuals residing in various places including Linn County, Iowa, with its principal office located in Cedar Rapids, Linn County, Iowa; that the Defendant International Brotherhood of Electrical Workers, AFofL-CIO, Local 716, hereinafter referred to as "Local 716", is a labor organization comprised of individuals residing in various places in the United States with its principal office in Houston, Texas; that Defendant Bechtel Corporation is a foreign corporation authorized to do business in the State of Iowa and actually engaged in business in Linn County, Iowa; that Local 405 and Local 716 are local labor organizations which are part of, and are controlled by, the International in relations with the treatment of members; that the Plaintiff, Joseph B. Walles, at all times material hereto, was a member of the International through his affiliation with Local 716.

2. That on or about September 3, 1971, the Plaintiff obtained a letter from an authorized agent of Local 716 to seek work in his regular employment in an area normally outside of the territory or jurisdiction of Local 716; that said letter is attached hereto, marked "Exhibit A" and made a part hereof by this reference.

3. That the Plaintiff presented "Exhibit A" to the authorized agent of Local 405 in Linn County, Iowa, and was given employment with the Defendant Bechtel Corporation on or about September 27, 1971, at a construction site near the town of Palo, Linn County, Iowa.

4. That the Plaintiff regularly paid assessments to Local 405; that the Plaintiff became in arrears in dues payment to Local 716; that the Plaintiff, prior to his termination of employment with Bechtel, traveled at his own expense to Houston, Texas and attempted to pay the arrears in his dues to Local 716, but that Local 716, by and through its authorized agent or agents, refused

to accept the payment of said arrearage in February of 1972; that as a direct result of the arrearage to Local 716, Local 716 advised the authorized agent or agents of Local 405 of the status of the Plaintiff and the authorized agent or agents of Local 405 contacted the authorized agent or agents of the Defendant Bechtel Corporation and the Plaintiff was wrongfully discharged on or about April 3, 1972, by the Defendant Bechtel Corporation; that Defendant Bechtel Corporation through its agents and employees had knowledge of the reasons for Local 405 desire to terminate the Plaintiff because of the arrearage in payment of union dues; that an agreement or understanding existed between said Bechtel Corporation and Local 405 that union membership was necessary for employment as an electrician on the construction site in Palo, Iowa.

5. That the actions on the part of Local 405, Local 716, and therefore the International, separately and in combination with each other and in combination with the action of Defendant Bechtel Corporation, caused the dismissal of the Plaintiff purely for the satus of his union membership; that the matter of union membership may not be the reason for dismissal from employment in the State of Iowa; that the Defendants have jointly and severally violated Section 736A.3 of the 1971 Code of Iowa, in that they have unlawfully entered into an agreement or understanding, jointly and severally, to exclude from employment electricians who have not current union status in the International; that, pursuant to said agreement or understanding, Defendants have jointly and severally violated Section 736A.4 of the 1971 Code of Iowa, in that they have required the Plaintiff as a condition of employment, to pay dues, charges, fees, contributions, and fines or assessments to a labor organization; that, pursuant to said condition, Defendants have jointly and severally violated Section 736A.2 of the 1971 Code of Iowa, in that they have required the Plaintiff as a condition of employment, to pay dues, charges, fees, contributions, and fines or assessments to a labor organization; that, pursuant to said condition, Defendants have jointly and severally violated Section 736A.2 of the 1971 Code of Iowa, in that they have denied to the

Plaintiff continued emloyment with Defendant Bechtel Corporation; that the Defendants have jointly and severally violated Section 736A.1 of the 1971 Code of Iowa, in that they have deprived the Plaintiff of his right to work.

6. That as a direct result of the actions of the Defendants, and each of them, the Plaintiff has been damaged in that he has lost considerable wages; has been unable to secure suitable, like employment; has been prevented from working in his chosen trade; has been damaged in his credit standing; has suffered extreme mental anguish, headaches, worry and loss of sleep; has become extremely nervous; has a need for future medical treatment; has suffered a loss of esteem; has been humiliated; and has been subjected to a permanent diminishment of vigor and energy by reason of the extreme pressure and trauma presented by the events described above and the resulting unemployment; that in addition, Plaintiff's damages include the loss of security and fringe benefits, supposedly made a part of union membership.

WHEREFORE, the Plaintiff prays for compensatory damages in the amount of One Hundred Thousand Dollars ($100,000.00) and the costs of this action.

DIVISION II

COMES NOW the Plaintiff, Joseph B. Walles, and for cause of action, jointly and severally, against Defendant International Brotherhood of Electrical Workers, AFofL-CIO, Defendant International Brotherhood of Electrical Workers, AFofL-CIO, Local 405, Defendant International Brotherhood of Electrical Workers, AFofL-CIO, Local 716 and Defendant Bechtel Corporation, states:

1. That the Plaintiff realleges and reincorporates herein, paragraphs 1 through 6 of Division I, the same as if fully set forth verbatim herein.

2. That the actions of the Defendants, and each of them, were willful and malicious and were designed and intended to harm, damage or injure the Plaintiff.

WHEREFORE, the Plaintiff prays for exemplary and punitive damages in the amount of One Hundred Fifty Thousand Dollars, ($150,000.00) and for the costs of this action.

/s/ James W. Crawford

JAMES W. CRAWFORD
615 Merchants National Bank
Cedar Rapids, Iowa 52401

/s/ Gerald T. Sullivan

GERALD T. SULLIVAN
615 Merchants National Bank
Cedar Rapids, Iowa 52401

/s/ Dr. Edwin Vieira, Jr.

DR. EDWIN VIEIRA, JR.
1990 M Street NW
Suite 400
Washington, D.C. 20036

ATTORNEYS FOR
PLAINTIFF
JOSEPH B. WALLES

Local Union 716

International Brotherhood of Electrical Workers

2501 Crawford Street Houston, Texas 77004

September 3, 1971

TO WHOM IT MAY CONCERN:

This is to introduce Brother Joseph B. Walles, Card Number D355-158,Classification; Journeyman Electrical Maintenance, member in good standing of the International Brotherhood of Electrical Workers, Local Union No. 716.

Brother Walles has more than five years experience in the trade, and during the past years has proven to be a qualified mechanic in the Inside Electrical Field.

Brother Walles is seeking employment in your jurisdiction. Any consideration given this Brother in securing employment will be appreciated.

Fraternally yours,

/s/ *R. T. Noack*
R. T. Noack
Business Manager

RTN:mlz
opeiu #129
afl-cio

EXHIBIT A

APPENDIX E

Respondents' Special Appearances in the Linn County (Iowa) District Court

Special Appearance of Bechtel Corp.

IN THE DISTRICT COURT OF IOWA IN AND FOR LINN COUNTY

JOSEPH B. WALLES,	)	
	)	
Plaintiff,	)	NO. LA 583-0374
	)	
vs.	)	
	)	
BECHTEL CORPORATION,	)	SPECIAL
	)	APPEARANCE
	)	
Defendant.	)	

COMES NOW the Defendant Bechtel Corporation and appears specially pursuant to RCP 66 for the sole and exclusive purpose of challenging the jurisdiction of the Court to consider the subject matter of Plaintiff's Petition, and in support thereof states:

1. Plaintiff alleges that this defendant either separately or in combination with one or more of the other defendants did "cause the dismissal of the Plaintiff purely for the status of his union membership".

2. The Federal government has by means of the National Labor Relations Act (NLRA) as amended (29 USC Chapter 7, sub-chapter II, Section 151 ff) sole and exclusive jurisdiction either through the National labor Relations Board (NLRB) or

through the Federal courts to determine controversies which are subject to the provisions of the NLRA.

3. Plaintiff's claim alleges a violation on the part of this defendant of Section 7 of the NLRA. Section 7 of the NLRA states that:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

Section 8(a)(1) makes it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7".

4. Plaintiff is in effect alleging that this defendant has interfered with his right to refrain from union activity as guaranteed by Section 7 of the NLRA. Defendant's allegations would, if proven, also constitute an unfair labor practice pursuant to Section 8 (a)(3) of the NLRA, which makes it an unfair labor practice for an employer to discriminate:

> ". . . in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

Plaintiff has not alleged that the NLRB or any other Federal Agency has refused jurisdiction of his claim, which is a prerequisite for the filing of this action.

5. The state courts, including the courts of the State of Iowa, lack jurisdiction of the subject matter of all suits subject to the protection of Sections 7 and 8 of the NLRA.

WHEREFORE, Defendant Bechtel Corporation moves the Court to sutain this Special Appearance for the reason that it lacks jurisdiction of the subject matter of Plaintiff's proported claim.

/s/ Patrick M. Roby

PATRICK M. ROBY

and

/s/ Robert R. Rush

ROBERT R. RUSH
of
Shuttleworth & Ingersoll
1120 Merchants National Bank Building
P. O. Box 2107
Cedar Rapids, Iowa 52406

Special Appearance of Local 405, IBEW

IN THE DISTRICT COURT OF IOWA IN AND FOR LINN COUNTY

JOSEPH B. WALLES,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	No. LA 583-0374
	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 405, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO LOCAL 716, and BECHTEL CORPORATION,	)	SPECIAL APPEARANCE AND REQUEST FOR HEARING
	)	
Defendants.	)	

COMES NOW International Brotherhood of Electrical Workers, AFL-CIO, Local 405 appearing specially by their attorney, Joseph E. Day, and questions the jurisdiction of this court to try, to hear and to grant the relief demanded by the plaintiff in his petition, and in support of said special appearance and request for hearing the International Brotherhood of Electrical Workers, AFL-CIO, Local 405 respectfully shows to the court as follows:

1. That this court is without jurisdiction in the above captioned matter for the reason that each and every act or action

alleged or asserted by the plaintiff in his petition with respect to International Brotherhood of Electrical Workers, AFL-CIO, Local 405 are activity set forth in Sec. 7 of the National Labor Relations Act as amended, or are prohibitive activity under Sec. 8 of the National Labor Relations Act as amended for which an exclusive remedy is provided for therein. Sec. 10 of the National Labor Relations Act provides for the filing of charges before the National Labor Relations Board.

2. That the parties herein are under the jurisdiction of the National Labor Relations Board and until such time as the National Labor Relations Board, through its 18th Regional offices located in Minneapolis, Minnesota, refuses to assert jurisdiction herein, this court is without jurisdiction.

3. That the plaintiff has not exhausted his available and adequate remedy before the National Labor Relations Board and, therefore, cannot seek relief in this court.

4. The plaintiff's petition contains no allegation concerning a denial by the National Labor Relations Board to accept jurisdiction in the above captioned matter.

5. That all of the acts alleged to be violations of Chapter 736A of the 1973 Code of Iowa as amended are covered by the Labor Management Relations Act of 1947 as amended, and Congress has vested the National Labor Relations Board with exclusive jurisdiction of all matters therein contained, both rights and violations, and the jurisdiction of this court to act herein is entirely preempted pursuant to the supremacy clause of the United States Constitution and federal statutes, and that the United States Supreme Court and the Iowa Supreme Court have determined that even though the act complained of might be violations of Iowa law, that they are violations or rights prohibited or protected under the National Labor Relations Act for which the National Labor Relations Board has exclusive jurisdiction to hear and determine.

WHEREFORE, International Brotherhood of Electrical Workers, AFL-CIO, Local 405 moves this court to dismiss the plaintiff's cause of action as this court has no jurisdiction herein, and International Brotherhood of Electrical Workers, AFL-

CIO, Local 405 is before the court for purposes of this special appearance and this special appearance only. It is further moved that the court set this matter down for hearing and direct the Clerk of this court to give notice to the parties concerned of the date, time, and place of said hearing.

/s/ Joseph E. Day

Joseph E. Day
915 Merchants National Bank
Cedar Rapids, Iowa 52401
319-365-0437

ATTORNEY FOR INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO LOCAL 405

cc:

Gerald T. Sullivan
615 Merchants National Bank

Patrick M. Roby
1120 Merchants National Bank

Special Appearance of Local 716, IBEW

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR LINN COUNTY

JOSEPH B. WALLES,	)
	) LAW NO. LA
	) 583-0374
Plaintiff	)
	)
vs.	)
	)
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 405; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 716; and BECHTEL CORPORATION,	) SPECIAL APPEARANCE OF DEFENDANT, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 716
Defendants	)

Comes now the defendant, International Brotherhood of Electrical Workers, AFL-CIO, Local 716, by its attorney, Raymond W. Conley, and appears specially to question the jurisdiction of this Court to try, to hear, and to grant the relief demanded by the plaintiff in his Petition as to this defendant, for the following reasons:

COUNT I.

That this Court is without jurisdiction over this defendant for the reason that service of the Original Notice was improper and ineffective as to this defendant. Service was attempted by filing copies of the Petition and Original Notice with the Secretary of State of the State of Iowa followed by a notification of such filing being mailed to this defendant at its Houston, Texas, office; that this procedure is the procedure for commencing actions against nonresidents or foreign corporations who have either engaged in business or tortious action within the State of Iowa and not against unincorporated associations; that Section 617.3 of the 1973 Code of Iowa does not make provision for service of Notice upon unincorporated associations.

COUNT II.

That the defendant is un unincorporated association; that its members reside in the State of Texas; that it carries on its business on behalf of said associated members only within the State of Texas and a part thereof only; that said unincorporated association has no business contacts, it has never engaged in business, nor has it any contract affecting any person or business within the State of Iowa, as set out in the Affidavit of Ronnie Patterson, president of said association; and this Court has no jurisdiction on said unincorporated association.

COUNT III.

That this Court is without jurisdiction in this cause for the reason that the plaintiff's Petition alleges acts on the part of all of the defendants for which an exclusive remedy is provided for by the National Labor Relations Act, as amended, U.S. Code 29, wherein there is provision for the filing of Charges before the

National Labor Relations Board; that the National Labor Relations Board, under the supremacy clause of the United States Constitution and statutes of the United States, has exclusive jurisdiction, and that Congress and the Federal law have preempted the field and this Court is without jurisdiction over this defendant in the labor dispute alleged.

Respectfully submitted,

/s/ Raymond W. Conley

Raymond W. Conley
340 Key Building
Des Moines, Iowa, 50309
Phone 244-6206 (515)

Attorney for the Defendant
International Brotherhood of
Electrical Workers, AFL-CIO,
Local 716

Copies filed for:

Gerald T. Sullivan
615 Merchants National Bank
Cedar Rapids, Iowa, 52401

Attorney for Plaintiff

Joseph E. Day
915 Merchants National Bank
Cedar Rapids, Iowa, 52401

Attorney for the Defendant,
IBEW, Local 405

AFFIDAVIT

STATE OF TEXAS)(
)(
COUNTY OF HARRIS)(

BEFORE ME, the undersigned authority, on this date personally appeared Ronnie Patterson, who being sworn by me stated the following:

My name is Ronnie Patterson. I am the president of Local Union 716, International Brotherhood of Electrical Workers. Local Union 716 is an unincorporated association of persons bound together as a labor organization as that term is defined in the National Labor Relations Act. Local Union 716 functions as a labor organization in Madison, Brazos, Grimes, Walker, San Jacinto, Montgomery, Washington, Waller, Austin, Colorado, Fort Bend, Lavaca, Wharton, Matagorda and Jackson Counties; that part of Brazoria County north of the Missouri-Pacific Railroad and west of Chocolate Bayou; and that part of Harris County north and west of a line beginning at the Harris-Chambers County line and Interstate Route 10, west on Route 10 to the San Jacinto River, south on the San Jacinto River to State Highway 134, Southwest and South on State Highway 134 to State Highway 225, East on State Highway 225 to Underwood Road, South on Underwood Road to Spencer Highway, West on Spencer Highway to Willow Springs Bayou, South on Willow Springs and Middle Bayou to Clear Lake and the Harris-Galveston County line, all located wholly in the State of Texas.

Local Union 716 is not engaged in business nor has it any contacts in any places other than those described above. The

offices of Local Union 716 are located at 2501 Crawford, Houston, Texas.

/s/ *Ronnie Patterson*
RONNIE PATTERSON

SUBSCRIBED AND SWORN TO BEFORE ME, by the said Ronnie Patterson this 2nd day of May, 1974, to certify, witness my hand and seal of office.

/s/ *Rufus H. Foster*
Notary Public in and for
Harris County, Texas

Special Appearance of IBEW

IN THE DISTRICT COURT OF THE STATE OF IOWA
IN AND FOR LINN COUNTY

JOSEPH B. WALLES,	)	
	)	LAW NO. LA
	)	583-0374
Plaintiff	)	
	)	
vs.	)	
	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 405; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 716; and BECHTEL CORPORATION,	)	SPECIAL APPEARANCE OF DEFENDANT, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO
	)	
Defendants	)	

Comes now the defendant, International Brotherhood of Electrical Workers, AFL-CIO, appearing specially by its attorney, Robert E. Conley, and questions the jurisdiction of this Court to try, to hear, and to grant the relief demanded by the plaintiff in his Petition as to this defendant, and in support of said Special Appearance, respectfully shows to the Court as follows:

COUNT I.

That this Court is without jurisdiction over this defendant for the reason that service of the Original Notice was ineffective and improper with regard to this defendant. Service was attempted by the plaintiff by filing copies of the Petition and Original Notice with the Secretary of State of the State of Iowa followed by a notification of such filing being mailed to this defendant at its Washington, D.C., office, apparently under the provisions of 617.3 of the 1973 Code of Iowa, which provides for service upon a nonresident or a foreign corporation; that such attempted service of Notice upon this defendant as an unincorporated association is improper and ineffective and not in compliance with the commencement of an action under the provisions of the Rules of Civil Procedure of the State of Iowa, which provides for service of Notice upon an "association one or more of whose members is a resident of Iowa."

COUNT II.

That the Court has not obtained jurisdiction over this defendant since the defendant is an unincorporated association and as such cannot sue or be sued in its own name, but said action must be commenced against this defendant as an unincorporated association in the manner of commencement of actions in a class action; that this defendant is not therefore properly before the Court and the Court lacks jurisdiction herein.

COUNT III.

That this Court is without jurisdiction in this cause for the reason that the plaintiff's Petition alleges acts upon the part of the defendants for which an exclusive remedy is provided for by the National Labor Relations Act, as amended, 29 U.S. Code; that Congress has provided for exclusive jurisdiction to be in the

National Labor Relations Board and jurisdiction of the field is entirely occupied by said Federal Act; that the jurisdiction of this Court to act is entirely preempted pursuant to the supremacy clause of the United States Constitution and Federal statutes.

Respectfully submitted,

/s/ Robert E. Conley

Robert E. Conley
340 Key Building
Des Moines, Iowa, 50309
Phone 244-6206 (515)

Attorney for the Defendant,
International Brotherhood of
Electrical Workers, AFL-CIO

Copies filed for:

Gerald T. Sullivan
615 Merchants National Bank
Cedar Rapids, Iowa, 52401

Attorney for the Plaintiff

Joseph E. Day
915 Merchants National Bank
Cedar Rapids, Iowa, 52401

Attorney for the Defendant,
IBEW, Local 405

Supreme Court, U. S.
FILED
SEP 2 1977
MIOHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-48

JOSEPH B. WALLES,
Petitioner,

vs.

BECHTEL CORP., et al.,
Respondents.

RESPONDENT BECHTEL CORP.'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF IOWA

Counsel for Respondent

PATRICK M. ROBY for
Shuttleworth & Ingersoll
500 Merchants National
Bank Building
P. O. Box 2107
Cedar Rapids, Iowa 52406

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ARGUMENT

I. THE IOWA SUPREME COURT CORRECTLY DECIDED THAT THE COURTS OF THAT STATE LACK JURISDICTION TO DECIDE THIS CASE DUE TO FEDERAL PREEMPTION.

The sole issue presented to this Court is whether the Iowa Supreme Court was correct in deciding that the State Courts lack jurisdiction in this case absent a negotiated and executed agreement between Bechtel Corp. (hereinafter "Bechtel") and Local 405 which contained a closed shop provision.

In San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959), the Court established the test for the application of the doctrine of federal preemption:

> "When an action is arguably subject to Sec. 7 or Sec. 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board." 359 U.S. at 245

Walles, in his Petition filed in State District Court, alleged that Bechtel discharged him pursuant to some sort of a closed shop "agreement". Such an action, is proved, would be more than arguably an unfair labor practice, it would clearly violate Sections 8(a) (1) and (3) of the National Labor Relations Act, 29 U.S. C. Sections 158(a) (1) and (3) of the National Labor Relations Act, 29 U.S. C. Sections 158(a) (1) and (3). Garmon therefore mandates that the National Labor Relations Board determine if an unfair labor practice has been committed before any court has jurisdiction.

Congress did not intend to totally preempt state regulation in this area, however. The states are free to legislatively establish prohibitions against closed shop agreements, under Section 14(b) of the Act, 29 U.S.C. 164(b), which provides:

> "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization

> as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." (emphasis added)

In Retail Clerks International Association Local 1625 v. Schermerhorn, 375 U.S. 96 (1963) (Schermerhorn II), this Court delineated the scope of state regulation under 14(b) when it expressly held:

> "/S/tate power, recognized by §14(b) begins only with actual negotiation and execution of the type of agreement described by 14(b). Absent such an agreement conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under Garmon."

While Section 14(b) establishes the rights of the states to prohibit the execution or application of closed shop agreements, Schermerhorn II limits the permissible scope of state regulation to negotiated and executed agreements.

Walles has not alleged that the specific type of agreement required by Schermerhorn II existed. To the contrary, he alleges only some kind of undefined "agreement or understanding". Under Schermerhorn II, this form of allegation is not sufficient to vest the state courts with jurisdiction. Indeed, the instant case is exactly what Schermerhorn referred to when it restricted state court jurisdiction to negotiated and executed agreements. Therefore, Schermerhorn II, together with the principles set forth by this Court in Garmon, clearly establish that unless and until the National Labor Relations Board determines that an unfair labor practice has been committed, or declines to do so, the Iowa State Courts are without jurisdiction to decide this case.

II. PETITION HAS FAILED TO DEMONSTRATE SUFFICIENT REASON FOR THE GRANTING OF A WRIT OF CERTIORARI.

A writ of certiorari to this Court is not obtainable as a matter of right but will be "granted only where there are special and important reasons therefor." Rule 19(1); Rules of the Supreme

Court of the United States. The Petitioner has failed to demonstrate any such reasons.

The decision of the Iowa Supreme Court does not in any way frustrate national labor policy as the Petitioner asserts. Rather it is in accord with the centralized administrative scheme established by Congress to deal with labor matters; Garner v. Teamsters Local 776, 346 U.S. 485 (1953); a scheme which has the expertise of the National Labor Relations Board at its core. Therefore, it was for the Board to decide, in the first instance, whether a closed shop agreement of the type alleged by Walles existed.

This case and the subsequent appeals have arisen solely because the Petitioner refused to follow the procedures established by Congress for dealing with unfair labor practices. Had Walles first gone to the Board, as he should have, this costly litigation could have been avoided. Indeed, Petitioner admits that he did not file a charge with the Board because it would have been "untimely". Bechtel is aware of no authority which excuses failure to follow the established procedures for such a reason.

CONCLUSION

The cases of San Diego Trades Council v. Garmon, 359 U.S. 236 (1959) and Retail Clerks International Association v. Schermerhorn, 375 U.S. 96 (1963), when taken together, conclusively establish that the National Labor Relations Board, and it alone, had original jurisdiction to decide the question raised by Walles in the Iowa State Court. Petitioner, in argument, asserts that if the decision of the Supreme Court of Iowa is permitted to stand it will encourage "lawlessness". On the contrary, by denying a writ of certiorari, this Court will encourage potential complaintants to follow the clearly prescribed policies, procedures and rules which have been established by Congress to deal with labor difficulties, and which have been further delineated and approved by this Court. Petitioner points to no issue of overriding national or constitutional significance which would require the attention of this Court and there is an absence of conflicting authority on the issue presented. The Petition for Certiorari should be denied.

Supreme Court, U. S.
FILED
AUG 31 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-48

JOSEPH B. WALLES,

Petitioner,

v.

BECHTEL CORP., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

MEMORANDUM IN OPPOSITION FOR RESPONDENTS INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO; AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCALS 405 AND 716

LAURENCE J. COHEN
RICHARD M. RESNICK
1125 Fifteenth Street, N.W.
Suite 801
Washington, D.C. 20005

Of Counsel:
SHERMAN, DUNN, COHEN & LEIFER
1125 Fifteenth Street, N.W.
Suite 801
Washington, D.C. 20005

3 3 PRINTED IN U.S.A.

IN THE

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October Term, 1977

No. 77-48

JOSEPH B. WALLES,

Petitioner,

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BECHTEL CORP., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

MEMORANDUM IN OPPOSITION FOR RESPONDENTS INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO; AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCALS 405 AND 716

The opinion of the Supreme Court of Iowa, the basis of this Court's jurisdiction, the question presented, the Constitutional and statutory provisions involved, and the statement of the case are set out at pp. 1-4, 1a-15a and 1c-4c of the Petition.

ARGUMENT

1. The Iowa Supreme Court held:

> "If plaintiff's allegation is that defendants maintained a 'closed shop' agreement, the NLRB has exclusive jurisdiction to deal with plaintiff's claim. On the other hand, if plaintiff's claim is based upon the alleged existence of a 'union shop' or some other less onerous union security agreement, a state court has jurisdiction to hear plaintiff's claim for relief based

upon alleged violations of a right-to-work law." (Pet. App. 8a.)[1]

In its view, that holding following directly from this Court's decisions in *San Diego Unions* v. *Garmon*, 359 U.S. 236, *Retail Clerks* v. *Schermerhorn*, 375 U.S. 96, and *Oil Workers* v. *Mobil Oil Corp.*, 426 U.S. 407.

We do not see how the Iowa Supreme Court's holding, or the reasoning on which it rests, can be disputed. Moreover, so far as we are aware, or as petitioner alleges, there is no contrary decision, federal or state. The petition should, therefore, be denied.

2. The *Garmon* rule is that:

> "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield." (359 U.S. at 244.)

For, as Mr. Justice Frankfurter explained:

> "To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. • • • [T]o allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes." (*Id.*)

There can, of course, be no doubt that, since 1947, one aspect of the "national regulation" imposed by the NLRA is the prohibition of the closed shop. As this Court noted in *Mobil Oil*, its most recent decision on the Act's regula-

[1] Since the complaint alleged the maintenance of a closed shop agreement (Pet. 2), that court dismissed the complaint for lack of jurisdiction.

tion of union security provisions (albeit one not cited or discussed in the petition):

> "Under § 8(3) of the Wagner Act, enacted in 1935, closed shops, union shops, and agency shops were all permitted. But in 1947, in § 8(a)(3), as added by the Taft-Hartley Act, Congress reacted to widespread abuses of closed-shop agreements by banning such arrangements [footnote omitted]. Union and agency shops were still permitted, however, by § 8(a)(3)." (426 U.S. at 414.)[2]

"[I]n stark contrast" (*Id.* at 415) to this absolute federal prohibition of the closed shop, the federal permission for the union and agency shops may, as § 14(b) makes explicit, be overridden by the states:

> "While § 8(a)(3) articulates a national policy that *certain union-security agreements* are valid as a matter of federal law, § 14(b) reflects Congress' decision that any State or Territory that wishes to may exempt itself from *that policy*. Section 14(b) allows a State or Territory to ban agreements 'requiring membership in a labor organization as a condition of employment'

[2] The Court explained the distinctions between these three forms of union security agreements as follows:

> "A 'union shop' agreement provides that no one will be employed who does not join the union within a short time after being hired. An 'agency shop' agreement generally provides that while employees do not have to join the union, they are required—usually after 30 days—to pay the union a sum equal to the union initiation fee and are obligated as well to make periodic payments to the union equal to the union dues. See *NLRB* v. *General Motors Corp.*, 373 US 734 (1963). The 'union shop' and 'agency shop' varieties of 'union security' agreements are to be distinguished from the 'closed shop' agreement, barred by § 8(a)(3), which provides that the employer will hire no one who is not a member of the union at the time of hiring." (*Id.* at 409, n. 1.)

[footnote omitted]. We have recognized that with respect to those state laws which § 14(b) permits to be exempted from § 8(a)(3)'s national policy '[t]here is . . . conflict between state and federal law; but it is a conflict sanctioned by Congress with directions to give the right of way to state laws. . . .' *Retail Clerks* v. *Schermerhorn,* 375 U.S. 96, 103 (1963). * * * As its language reflects, § 14(b) was designed to make clear that § 8(a)(3) left the States free to pursue 'their own more restrictive policies in the matter of union-security agreements.' *Algoma Plywood Co.* v. *Wisconsin Board,* 336 U.S. 301, 314 (1949)." (*Id.* at 416-417. Emphasis added.)[3]

In short, as this Court stated: "[s]ince § 8(a)(3) already prohibits the closed shop," whose distinguishing feature is that union membership is required at the hiring stage and thereafter, "the more restrictive policies that § 14(b) allows the States to enact relate not to the hiring process," *viz.,* not to closed shop agreements, "but rather to conditions that would come into effect only *after* an individual is hired," *viz.,* to union and agency shop agreements whose distinguishing feature is that in the period beginning 30

[3] The dispute between the *Mobil Oil* majority and Justices Stewart and Rehnquist, dissenting, concerned the proper method "for determining whose law should prevail in a multi-jurisdictional situation." (426 U.S. at 428; Stewart, J. dissenting.) The dissenting opinion's summary of the purpose and scope of § 14(b) parallels that of the majority:

> "To summarize, §§ 8(a)(3) and 14(b) together exhaust the federal interest in the types of union-security agreements employers and unions may make. *The closed shop is absolutely prohibited. And any lesser security arrangement, though consistent with the federal interest, is sanctioned only if it harmonizes with state policy.*" (*Id.* at 427; Stewart, J. dissenting. Emphasis added.)

days after hire payment of union dues or agency shop fees is required. (*Id.* at 417.)

Thus, the Iowa Supreme Court's holding is but a restatement of this Court's demarcation of the area reserved to the NLRB congruent with the uniform federal rule prohibiting the closed shop, and the area open to the States congruent with the rules regulating the union and agency shops as to which "Congress chose to abandon any search for uniformity * * * and decided to suffer a medley of attitudes and philosophies." (*Schermerhorn,* 375 U.S. at 104-105.)

3. As we have just demonstrated, this Court's decisions refute petitioner's argument (Pet. 4-5) that the Iowa Supreme Court's decision is inconsistent with § 14(b)'s language. And, contrary to petitioner's suggestion (Pet. 5-8), those decisions faithfully reflect the Congressional intent. The complex consisting of § 8(a)(3), its provisos and § 14(b) is the product of the Conference Committee that resolved the differences between the House and Senate bills. As the House Conference Report stated:

> "Neither the so-called 'closed shop' proviso in section 8(3) of the existing act nor the union shop and maintenance of membership proviso in section 8(a)(3) of the conference agreement could be said to *authorize* arrangements of this sort in States where such arrangements were *contrary to the State policy.* To make certain that there should be no question about this, section 13 was included in the House bill. The conference agreement, in section 14(b), contains a provision having the same effect." (H. Conf. Rep. No. 510, on HR 3020, 80th Cong., 1st Sess. 60. Emphasis added.)[4]

[4] This critical distinction, with respect to the reach of § 14(b),

Thus, the authoritative Conference Report confirms that Congress did not intend to grant the states authority to duplicate the Act's prohibition of the closed shop, but rather, intended to grant the states authority only to prohibit the execution or application of union security agreements which are otherwise *permitted* by federal law.

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between the closed shop on the one hand and union and agency shops on the other, was recognized by this Court in *Mobil Oil* when it noted "the House's intent that agreements providing for *agency or union shops* would be valid 'only if they are valid under the laws of any State in which they are to be performed.'" (*Id.* at 418. Emphasis added.)

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

LAURENCE J. COHEN
RICHARD M. RESNICK
1125 Fifteenth Street, N.W.
Suite 801
Washington, D.C. 20005

Of Counsel:
SHERMAN, DUNN, COHEN & LEIFER
1125 Fifteenth Street, N.W.
Suite 801
Washington, D.C. 20005

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